APPENDIX.

STATUTES INVOLVED.

The Standard Container Act of August 31, 1916, c. 426, 39 Stat. 673 as amended by Act of June 11, 1934, c. 447, 48 Stat. 930 (15 U. S. C. A. 251 *et seq.*) provides:

> SEC. 1. Standards for Climax baskets for grapes and other fruits and vegetables shall be the two-quart basket, four-quart basket, and twelve-quart basket, respectively:
>
> (a) The standard two-quart Climax basket shall be of the following dimensions: Length of bottom piece, nine and one-half inches; width of bottom piece, three and one-half inches; thickness of bottom piece, three-eighths of an inch; height of basket, three and seven-eighths inches, outside measurement; top of basket, length eleven inches and width five inches, outside measurement. Basket to have a cover five by eleven inches, when a cover is used.
>
> (b) The standard four-quart Climax basket shall be of the following dimensions: Length of bottom piece, twelve inches; width of bottom piece, four and one-half inches; thickness of bottom piece, three-eighths of an inch; height of basket, four and eleven-sixteenths inches, outside measurement; top of basket, length fourteen inches, width six and one-fourth inches, outside measurement. Basket to have cover six and one-fourth inches by fourteen inches, when cover is used.
>
> (c) The standard twelve-quart Climax basket shall be of the following dimensions: Length

of bottom piece, sixteen inches; width of bottom piece, six and one-half inches; thickness of bottom piece, seven-sixteenths of an inch; height of basket, seven and one-sixteenth inches, outside measurement; top of basket, length nineteen inches, width nine inches, outside measurement. Basket to have cover nine inches by nineteen inches, when cover is used.

(d) The standards for Climax baskets for mushrooms shall be those set forth above, except that a one-pound Climax basket of the following dimensions shall be standard for mushrooms when plainly stamped or marked on the side of the basket with the words "for mushrooms only": Length of bottom piece, seven and three fourths inches; width of bottom piece, three and three sixteenths inches; thickness of bottom piece, three eighths of an inch; height of basket, three and five eighths inches; top of basket, length, nine and three eighths inches; width, four and three eighths inches; all outside measurements. Basket to have a cover four and three eighths by nine and three eighths inches when cover is used.

SEC. 2. The standard basket or other container for small fruits, berries, and vegetables shall be of the following capacities, namely, dry one-half pint, dry pint, dry quart, or multiples of the dry quart.

(a) The dry half pint shall contain sixteen and eight-tenths cubic inches.

(b) The dry pint shall contain thirty-three and six-tenths cubic inches.

(c) The dry quart shall contain sixty-seven and two-tenths cubic inches.

SEC. 3. It shall be unlawful to manufacture for shipment, or to sell for shipment, or to ship from any State or Territory of the United States or the District of Columbia to any other State or Territory of the United States or the District of Columbia, any Climax baskets or other containers for small fruits, berries, or vegetables, whether filled or unfilled, which do not conform to the provisions of this subdivision of this chapter, or to use in any such shipment for any commodity other than mushrooms the one-pound Climax basket provided for in section 1 of this title; and any person guilty of a willful violation of any of the provisions of said subdivision shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined in any sum not exceeding $25: Provided, That nothing herein contained shall apply to the manufacture, sale, or shipment of Climax baskets, baskets, or other containers for small fruits, berries, and vegetables when intended for export to foreign countries when such Climax baskets, baskets, or other containers for small fruits, berries, and vegetables accord with the specifications of the foreign purchasers or comply with the law of the country to which shipment is made or to be made.

SEC. 4. The examination and test of Climax baskets, baskets, or other containers for small fruits, berries, and vegetables, for the purpose of determining whether such baskets or other containers comply with the provisions of this subdivision of this chapter, shall be made by the Department of Agriculture, and the Secretary of Agriculture shall establish and promulgate rules

and regulations allowing such reasonable tolerances and variations as may be found necessary.

SEC. 5. It shall be the duty of each district attorney, to whom satisfactory evidence of any violation of this subdivision of this chapter is presented, to cause appropriate proceedings to be commenced and prosecuted in the proper court of the United States for the enforcement of the penalties as in such case provided in said subdivision.

SEC. 6. No dealer shall be prosecuted under the provisions of this subdivision of this chapter when he can establish a guaranty signed by the manufacturer, wholesaler, jobber, or other party residing within the United States from whom such Climax baskets, baskets, or other containers, as defined in said subdivision, were purchased, to the effect that said Climax baskets, baskets, or other containers are correct within the meaning of said subdivision. Said guaranty, to afford protection, shall contain the name and address of the party or parties making the sale of Climax baskets, baskets, or other containers to such dealer, and in such case said party or parties shall be amenable to the prosecutions, fines, and other penalties which would attach in due course to the dealer under the provisions of this subdivision of this chapter.

CONSTITUTION.

The Constitution, Article I, Section 8, Clause 5, provides:

> The Congress shall have power * * * to * * * fix the Standard of Weights and Measures.

SUPREME COURT OF THE UNITED STATES.

Nos. 62 and 63.—October Term, 1936.

The United States of America, Appellant, vs. Charles Resnick and Joseph Resnick, Partners Trading as L. Resnick and Sons.	Appeals from the District Court of the United States for the Eastern District of Pennsylvania.
62	
The United States of America, Appellant, vs. The Acme Can Company.	
63	

[December 7, 1936.]

Mr. Justice Butler delivered the opinion of the Court.

Appellees were indicted for violations of the Act of May 21, 1928, 45 Stat. 685, 15 U. S. C., §§ 257-257i. In No. 62, the indictment is in four counts, each of which charges that defendants sold for fruits and vegetables two-quart metal hampers which did not comply with the Act in that they were not of any standard size authorized by the Act and did not come within any tolerance established by the Secretary of Agriculture. In No. 63, the indictment is in two counts. The first charges that defendant manufactured two-quart metal hampers that were not of any authorized size or within prescribed tolerances without having submitted dimension specifications to the Secretary. The second charges sale of them. In each case, the accused demurred upon the ground that the facts alleged are not sufficient to constitute a violation of the Act. The court sustained the demurrers and discharged the defendants. The United States appealed. 18 U. S. C., § 682.

Section 1 of the Act declares: "That the standard hampers . . . for fruits and vegetables shall be of the following capacities", and specifies nine sizes based upon a bushel of 2150.42 cubic inches. The sizes so defined are one-eighth, one-fourth, one-half, five-eighths,

three-fourths, one bushel, one and one-fourth, one and one-half, and two bushels. Computed according to the standard fixed, the capacity of a two-quart hamper is 134.4 cubic inches. Section 3 directs the Secretary of Agriculture to prescribe such tolerances as he may find necessary to allow in the capacities set forth in § 1. Section 4 commands: "That no manufacturer shall manufacture hampers . . . unless the dimension specifications . . . shall have been submitted to and approved by the Secretary of Agriculture, who is hereby directed to approve such specifications if he finds that hampers . . . made in accordance therewith would not be deceptive in appearance and would comply with" § 1. Section 5 makes it "unlawful to manufacture for sale . . . [or] to sell . . . hampers . . . for fruits or vegetables . . . that do not comply with this Act . . ." Anyone "that violates this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding $500."

The question is whether the provisions of the Act are effective to make the manufacture or sale of two-quart hampers punishable as a crime. The nine sizes standardized in § 1 are the only ones within § 4. The Secretary was not authorized by § 3 to prescribe tolerances in respect of two-quart hampers, and has not attempted to do so. The indictments must be construed to charge merely manufacture and sale of hampers each of capacity of two quarts, one-sixteenth of a bushel, 134.4 cubic inches. They do not charge that any such hamper purported to be of any size defined by § 1, or was in any respect liable to deceive. It follows that, unless the clause of § 5 which forbids manufacture or sale of containers "that do not comply with this Act" makes criminal the manufacture or sale of two-quart hampers, the facts alleged do not constitute any offense.

Statutes creating crimes are to be strictly construed in favor of the accused; they may not be held to extend to cases not covered by the words used. *United States* v. *Wiltberger,* 5 Wheat. 76, 95. *Fasulo* v. *United States,* 272 U. S. 620, 628. The clause just quoted is crucial; its words are plain and, having regard to the connection in which they are used, must be given the meaning naturally attributable to them. It is obvious that they do not extend to hampers other than the nine classes defined in § 1. The Act applies to none of capacity less than four quarts. *Pacific States Co.* v. *White,* 296

U. S. 176, 183. It expresses no condemnation of two-quart hampers. Before one may be punished, it must appear that his case is plainly within the statute; there are no constructive offenses. *United States* v. *Lacher*, 134 U. S. 624, 628. *United States* v. *Chase*, 135 U. S. 255, 261. *Fasulo* v. *United States, supra*, 629. As in absence of governmental regulation the making and selling of containers is untrammeled, failure expressly to permit is not to prohibit. Mere standardization of a bushel container at 2150.42 cubic inches would not make criminal the manufacture or sale of a half-bushel container having capacity of 1075.21 cubic inches. The prescribing of capacities of containers described in § 1 does not prohibit manufacture or sale of the two-quart hampers described in these indictments.

The judgments sustaining the demurrers and discharging the accused must be affirmed.

It is so ordered.

A true copy.

Test:

Clerk, Supreme Court, U. S.